

# WEST VIRGINIA LEGISLATURE

## 2024 REGULAR SESSION

Introduced

### Senate Bill 209

FISCAL  
NOTE

By Senators Weld and Chapman

[Introduced January 11, 2024; referred  
to the Committee on Finance]

1 A BILL to amend and reenact §11-21-3 of the Code of West Virginia, 1931, as amended, relating to  
 2 the personal income tax; and exempting certain irrevocable trusts from the personal  
 3 income tax.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE                    21.                    PERSONAL                    INCOME                    TAX.**  
**§11-21-3.                    Imposition                    of                    tax;                    persons                    subject                    to                    tax.**

1                    (a) Imposition of tax. — A tax determined in accordance with the rates hereinafter set forth  
 2 in this article is hereby imposed for each taxable year on the West Virginia taxable income of every  
 3 individual, estate, electing pass-through entity, and trust.

4                    (b) Partners and partnerships. — A partnership or other pass-through entity as such shall  
 5 not be subject to tax under this article, unless the partnership or other pass-through entity elects to  
 6 be subject to the tax levied under this section for a taxable year pursuant to §11-21-3a of this code.  
 7 Persons carrying on business as partners or owners of a pass-through entity shall be liable for tax  
 8 under this article only in their separate or individual capacities, unless the partnership or other  
 9 pass-through entity elects to be subject to the tax levied under this section for a taxable year  
 10 pursuant to §11-21-3a of this code. However, partnerships and other pass-through entities are  
 11 subject to the tax imposed by this article to the extent they elect to pay additional West Virginia  
 12 income taxes owed that are attributable to final federal partnership audit adjustments under §11-  
 13 21A-3 of this code.

14                    (c) Associations taxable as corporations. — An association, trust, or other unincorporated  
 15 organization which is taxable as a corporation for federal income tax purposes, shall not be subject  
 16 to tax under this article.

17                    (d) Exempt trusts and organizations. — A trust or other unincorporated organization which  
 18 by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax  
 19 under this article (regardless of whether subject to federal income tax on unrelated business  
 20 taxable income).

21 (e) Irrevocable trusts. -- The income earned on an irrevocable trust created under the laws  
22 of the State of West Virginia and administered by any West Virginia state chartered banking  
23 institution or a federally chartered banking institution with its corporate headquarters located in this  
24 state shall be exempt from tax under this article.

25 ~~(e)~~ (f) Cross references. — For definitions of West Virginia taxable income of:

26 (1) Resident individual, see §11-21-11 of this code.

27 (2) Resident estate or trust, see §11-21-18 of this code.

28 (3) Nonresident individual, see §11-21-30 of this code.

29 (4) Nonresident estate or trust, see §11-21-38 of this code.

30 ~~(f)~~ (g) Effective date. — ~~This section as amended in 2023 shall apply to taxable years~~  
31 ~~beginning on and after January 1, 2022.~~ The provisions of this section, as amended during the  
32 2024 regular legislative session, shall apply to taxable years beginning on and after January 1,  
33 2025.

NOTE: The purpose of this bill is to exempt certain irrevocable trusts created and administered in the State of West Virginia from the state income tax.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.